

No. 12493

United States
Court of Appeals
For the Ninth Circuit.

J. GORDON TURNBULL, SVERNDRUP AND
PARCEL and UNITED STATES FIDEL-
ITY AND GUARANTY COMPANY,

Appellants,

vs.

ALBERT J. CYR, Deputy Commissioner for the
Thirteenth Compensation District of the Bureau
of Employees' Compensation, FEDERAL SE-
CURITY AGENCY and LOIS G. M. ROSS,
alleged widow of Kenneth R. Ross, and JOHN
CARY ROSS, a minor child,

Appellees.

Transcript of Record

Appeal from the United States District Court
Northern District of California,
Southern Division.

FILED

APR - 5 1950

PAUL P. O'BRIEN,

No. 12493

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

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465 California Street,
San Francisco, California,

Attorneys for Complainants and Appellants.

FRANK J. HENNESSY,

United States Attorney,
Northern District of California,
San Francisco, California,

Attorney for Respondents and Appellees.

In the United States District Court for the Northern District of California, Southern Division

No. 28237H

J. GORDON TURNBULL and SVERNDRUP
AND PARCEL, and U. S. FIDELITY AND
GUARANTY COMPANY,

Complainants,

vs.

ALBERT J. CYR, Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency, and LOIS G. M. ROSS, alleged widow of KENNETH R. ROSS and JOHN GARY ROSS, a minor child,

Respondent.

COMPLAINT TO REVIEW COMPENSATION ORDER AND FOR INJUNCTION

Complainants complain of respondents above-named and allege as follows:

I.

That complainants, J. Gordon Turnbull and Sverndrup and Parcel were at all times herein mentioned individuals.

II.

That the complainant, U. S. Fidelity and Guaranty Company is and was at all times herein mentioned a corporation, duly organized and existing

under and by virtue of the laws of the State of Maryland, and duly organized to operate and do business within the State of California, and elsewhere within the United States, and in particular at locations without the territorial limits of the continental United States including defense bases as the same are described in Section 1651 U. S. Code, 42.

III.

That the respondent, Albert J. Cyr, is and at all times herein mentioned has been a deputy commissioner of the Bureau of Employees' Compensation, Federal Security Agency, formerly known as the United States Employees' Compensation Commission, and has functioned in said capacity of a deputy commissioner in the Fourteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency, and at the time of the issuance of the compensation order herein complained of was a deputy commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency, and that said Thirteenth Compensation District includes the State of California; that said deputy commissioner, the said Albert J. Cyr administers the provisions of that certain act of Congress known as the "Defense Base Act," which is an extension of the provision of Longshoremen and Harbor Workers Compensation Act as contained in 42 U. S. Code 1651-1654 enacted by Congress August 16, 1941.

IV.

That Lois G. M. Ross, alleged widow of Kenneth R. Ross, deceased, and John Gary Ross are the persons in whose favor an award for death benefit was made, as hereinafter related, and both of said respondents are therefore beneficially interested in this proceeding, and for that reason are made party respondents.

V.

That this Court has jurisdiction in this cause of action by reason of the provisions of the Longshoremen's and Harbor Workers Compensation Act (Title 33), Sec. 901 U. S. Code, (44 Stat. 1424) as extended by Act of Congress of the United States approved August 16, 1941, 55 Stat. 623 (42 U.S.C.A. Secs. 1651-1654) ("Defense Bases Act"), and particularly by reason of Section 1653(b) thereof, reading as follows:

"(b) Judicial proceedings provided under Sections 918 and 921 of Title 33 in respect to a compensation order made pursuant to Sections 1651-1654 of this title shall be instituted in the United States District Court of the judicial districts wherein is located the office of the deputy commissioner whose compensation order is involved if his office is located in a judicial district, and if not so located, such judicial proceedings shall be instituted in the judicial district nearest the base at which the injury or death occurs."

In accordance with the aforesaid subsection (b)

this complaint for injunction is brought pursuant to the procedure set forth in the Longshoremen's and Harborworker's Compensation Act of March 4, 1927, as amended (45 Stat. 921; 33 U.S.C.A. Section 921), and hereinafter called "The Act."

VI.

That on or about March 17, 1943 Kenneth R. Ross, deceased, entered the employ of complainants J. Gordon Turnbull and Sverdrup and Parcel, on a United States defense base project known as "Canol" which was located within the Dominion of Canada; that thereafter said Kenneth R. Ross became totally disabled on account of a flareup of a previous quiescent tuberculosis from October 27, 1943 up to and including March 30, 1948, save and except 30 days wherein he worked in the year 1945; that prior to April 26, 1946 said Kenneth R. Ross applied to the Fourteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency for benefits under the Defense Base Act hereinbefore mentioned; that on date April 26, 1946, Deputy Commissioner Albert J. Cyr, then attached to the Fourteenth Compensation District, issued a compensation order rejecting said Kenneth R. Ross' claim for benefits; that thereafter said Kenneth R. Ross became a resident of the State of California, which is in the territory of the Thirteenth Compensation District, and upon his application his file was duly transferred from the Fourteenth Compensation District to said Thirteenth

Compensation District; that thereafter on proper application and showing to Warren H. Pillsbury, a deputy commissioner for the Thirteenth Compensation District for the Bureau of Employees' Compensation, Federal Security Agency, issued an order allowing benefits under the provisions of the "Defense Base Act" heretofore mentioned, against complainants here; that said order was issued on April 26, 1946 and became final on or about May 26, 1946 as no appeal from said order was taken. Said order provided for the payment of compensation benefits at the rate of \$25 per week to Kenneth Ross from October 27, 1943 up to and including February 4, 1946 and continuing in accordance with his thereafter actual disability.

VII.

That said Kenneth R. Ross died as a result of his injuries on March 30, 1948 in Denver, Colorado, which is within the jurisdictional limits of the Thirteenth Compensation District.

IX.

That thereafter respondent Lois G. M. Ross, filed her verified application for death benefits as provided for in said "Defense Base Act," alleging that she was the widow of said Kenneth R. Ross, deceased, and that said marriage had taken place before a Justice of the Peace at Tia Juana, Mexico on October 5, 1946.

X.

That on and before March 13, 1943 complainant U. S. Fidelity and Guaranty Company, under and by virtue of a contract with J. Gordon Turnbull and Sverdrup and Parcel, insured said employers against the liability imposed against it by the Defense Base Act.

XI.

That after March 30, 1948 on the application of the alleged widow herein, this matter came on regularly for hearing before Deputy Commissioner Albert J. Cyr, and issues were joined, and evidence, both oral and documentary, was received and the matter submitted for decision.

XII.

That thereafter, on the 8th day of July 1948, the respondent, Albert J. Cyr, as Deputy Commissioner, filed in his office and served upon the parties to said proceedings a compensation order—Award of Death Benefit; that copy of said compensation order—Award of Death Benefit—is attached hereto as Exhibit A and made a part hereof.

XIII.

That no proceedings for the suspension or setting aside of said compensation order—Award of Death Benefit—filed July 8, 1948, have ever been instituted as provided in subdivision (b) of section 921 of Said Act, or elsewhere, or at all; that under the provisions of Said Act the said order became effec-

tive when filed July 8, 1948, and except for these proceedings to suspend or set aside said order would become final at the expiration of 30 days after said date July 8, 1948.

XIV.

That said compensation order—Award of Death Benefit—is not in accord with law in finding the respondent, Lois G. M. Ross, the alleged widow of the deceased, and John Gary Ross, to be legal dependants upon the deceased on date October 27, 1943, the date of injury herein, and entitled to a death benefit at the rate of \$13.13 a week for the alleged widow and \$3.75 per week for John Gary Ross, and continuing thereafter until further order of the deputy commissioner, when the evidence shows without contradiction—

(a) that on October 27, 1943, the date of injury herein, the deceased, Kenneth R. Ross, was not married to Lois G. M. Ross, the alleged widow herein, and respondent, and that John Gary Ross was not in being on said date;

(b) when the evidence shows that the deceased, Kenneth R. Ross, had been unemployed for the entire period from October 27, 1943, to and including March 30, 1948, save and except for 30 days work in the year 1945, and could not have had either a dependent wife or a dependent child at the time of the injury herein;

(c) that the prerequisites of a commonlaw mar-

riage, which is the status found in the order complained of herein of the respondent Lois G. M. Ross, did not exist at any time by virtue of the failure of the parties to conform to the prerequisites of a commonlaw marriage as required by law.

XV.

Complainants are informed and believe, and on such information and belief allege that respondents Lois G. M. Ross and John Gary Ross, a minor, will be unable to pay complainants herein the amounts which complainants are required to pay by reason of said compensation order—Award of Death Benefit—and that unless the enforcement of said order be stayed by injunction herein, complainants will suffer irreparable damage and injury.

XVI.

That the complainants have no adequate nor any remedy other than these proceedings, which are brought pursuant to the provisions of section 921 of the Longshoremens and Harborworkers Compensation Act, which provides that if not in accordance with law, a compensation order may be suspended or set aside in whole or in part through injunction proceedings brought by any party in interest against the deputy commissioner making the order.

XVII.

That all of said proceedings before the said deputy commissioner are contained in a file of said

deputy commissioner under the case number DB-14C-8-20, together with the testimony of witnesses heard by the deputy commissioner or by deposition.

That the deputy commissioner should be required to file with the clerk of this Court, at a time to be fixed by the Court, a certified copy of all proceedings had before him, together with all exhibits, transcripts of testimony, letters and documents of every nature and description received by said deputy commissioner in consideration of said claim.

Wherefore, complainants pray that process in due form of law according to the course of this Honorable Court may issue, and that respondents may be cited to appear and answer all and singular the matters hereinbefore set forth, and that the order of said deputy commissioner filed July 8, 1948, be set aside and declared a nullity and that a mandatory injunction be issued herein setting aside and restraining enforcement of said purported order dated July 8, 1948 and that the respondents be permanently enjoined from making, or attempting to make any further orders with respect to said proceedings, and for such other further and different relief as to the Court may seem justified, and for costs incurred herein.

LEONARD, HANNA and
BROPHY,
/s/ DONALD R. BROPHY,
Attorneys for Complainants.

Dated at San Francisco August 7, 1948.

State of California,
City and County of San Francisco—ss.

Donald R. Brophy, being first duly sworn, deposes and says that:

He is one of the attorneys for the complainants herein and makes this verification on their behalf for the reason that there is no officer of the U. S. Fidelity and Guaranty Company residing in the City and County of San Francisco and of the complainants are not within the City and County of San Francisco; that he is more fully in possession of the facts and circumstances related to the matters herein alleged than are complainants; that he has read the foregoing Complaint to Review Compensation Order and for Injunction and knows the contents thereof and that the matters and things therein alleged are true to his own knowledge.

/s/ DONALD R. BROPHY.

Subscribed and sworn to before me this 7th day of August, 1948.

[Seal] /s/ ALFRED D. MARTIN,
Notary Public in and for the City and County of
San Francisco, State of California.

Exhibit A

Federal Security Agency Bureau of Workmen's
Compensation, 13th Compensation District

Case No. DB-14C-8-20

In the Matter of the Claim for Compensation under
the Acts of Congress of August 16, 1941 and
December 2, 1942, extending the Longshore-
men's and Harbor Workers' Compensation Act.

LOIS G. M. ROSS, widow of Kenneth R. Ross and
John Gary Ross, minor child,

Claimants,

against

J. GORDON TURNBULL and SVERDRUP AND
PARCEL,

Employer,

U. S. FIDELITY AND GUARANTY COMPANY,
Insurance Carrier.

COMPENSATION ORDER AWARD OF
DEATH BENEFIT

Compensation Order having been filed herein on
April 26th, 1946 awarding to Kenneth R. Ross com-
pensation benefits for temporary total disability at
the weekly rate of \$25.00 and the claimant having
died as the result of his injury on March 30th 1948
and the claimant herein, Lois G. M. Ross, having
filed a claim for death benefit as the Widow of Ken-

neth R. Ross and a hearing having been held on such claim and the case submitted for decision, the Deputy Commissioner makes the following:

Findings of Fact

That the employer and insurance carrier paid to Kenneth R. Ross compensation benefits to and including March 19, 1948, 225 weeks at \$25.00 a week amounting to \$5625.00; that there is an additional amount of \$35.71 due for the period of March 20, 1948 to and including March 29, 1948, 1-3/7 weeks; that Lois G. M. Ross, born May 21, 1921 is the widow of the deceased herein by virtue of a common-law marriage contracted in the State of Colorado and is entitled to death benefit of \$13.13 a week beginning with March 30, 1948; that John Gary Ross, born September 2, 1947, is the minor son of Kenneth Ross and Lois G. M. Ross and is entitled to a benefit of \$3.75 a week beginning with March 30, 1948 payable to Lois G. M. Ross as his natural guardian; that the claimant's attorney, Lawrence M. Henry has rendered legal services to the claimant in the prosecution of her claim for which a fee is approved in the amount of \$50.00 and a lien granted therefor upon compensation herein awarded.

Upon the foregoing facts the Deputy Commissioner makes the following:

Award

That the employer, J. Gordon Turnbull and Sverdrup & Parcel, and the insurance carrier, U. S.

Fidelity & Guaranty Company shall pay to the claimant, Lois G. M. Ross, compensation and death benefits as follows:

The sum of \$35.71 representing compensation benefits due to Kenneth R. Ross on the date of his death; beginning with March 30, 1948, \$16.88 a week in installments each two weeks representing death benefit of \$13.13 a week due to the widow and \$3.75 a week due to the minor son, John Gary Ross, less however, the sum of \$50.00 to be deducted therefrom and paid to the claimant's attorney, Lawrence M. Henry, as his lien for attorney's fee.

Given under my hand at San Francisco, California this 8th day of July, 1948.

ALBERT J. CYR,

Deputy Commissioner,

13th Compensation District.

[Endorsed]: Filed August 7, 1948.

In the United States District Court for the Northern District of California, Southern Division

No. 28237-H

J. GORDON TURNBULL and SVERNDRUP and
PARCEL, and U. S. FIDELITY AND GUAR-
ANTY COMPANY,

Complainants,

vs.

ALBERT J. CYR, Deputy Commissioner for the
Thirteenth Compensation District of the Bureau
of Employees' Compensation,

Respondent.

MOTION OF RESPONDENT ALBERT J. CYR,
DEPUTY COMMISSIONER, TO DISMISS
BILL OF COMPLAINT

Now comes the respondent Albert J. Cyr, Deputy Commissioner of the United States Employees' Compensation Commission for the 13th Compensation District of the Bureau of Employees' Compensation, by his attorney, Frank J. Hennessy, United States Attorney for the Northern District of California, and moves this Honorable Court to dismiss the Bill of Complaint after review of the Compensation Order filed herein, for the following reasons:

1. That the Bill of Complaint filed herein does not state a cause of action and does not entitle plaintiffs to any relief, nor does said Bill of Complaint state a claim against the respondent Albert J. Cyr,

Deputy Commissioner, upon which relief can be granted.

2. That it appears from the Bill of Complaint, including the transcripts of testimony taken before the Deputy Commissioner on file herein, that the findings of fact the Deputy Commissioner in the Compensation Order filed by him on July 8, 1948, complained of in the Bill of Complaint, was supported by evidence and under the law said findings of fact should be regarded as final and conclusive.

3. That it appears from the Bill of Complaint, including said transcripts of testimony, that said Compensation Order complained of herein is in all respects in accordance with law.

4. For such other good and sufficient reasons as may be shown.

/s/ FRANK J. HENNESSY,
U. S. Attorney.

/s/ DANIEL C. DEASY,
Asst. U. S. Attorney,
Attorneys for Respondent.

ALBERT J. CYR,
Deputy Commissioner.

[Endorsed]: Filed February 8, 1949.

[Title of District Court and Cause.]

ORDER

Although I find in the file what appears to be a transcript of the proceedings, including the testimony taken before the Deputy Commissioner, and the briefs refer to that testimony, the transcript is not properly before me in the consideration of Respondent's motion to dismiss.

If at the trial it is counsels' intention to offer the transcript and then rest, I suggest that an appropriate stipulation be so made and filed and the case submitted.

The motion to dismiss is denied without prejudice to its renewal at the trial.

Dated: August 19th, 1949.

/s/ DAL M. LEMMON,
U. S. District Judge.

[Endorsed]: Filed August 19, 1949.

In the United States District Court for the Northern District of California, Southern Division

No. 28237-H-L

J. GORDON TURNBULL and SVERNDRUP and
PARCEL, and U. S. FIDELITY AND GUAR-
ANTY COMPANY,

Complainants,

vs.

ALBERT J. CYR, Deputy Commissioner for the
Thirteenth Compensation District of the Bureau
of Employees' Compensation,

Respondent.

STIPULATION FOR RECEIPT OF EVIDENCE
AND SUBMISSION OF MOTION TO DISMISS

It is hereby stipulated by and between counsel for complainants and counsel for respondent herein that the entire record of the proceedings before the deputy commissioner as contained in the "Certification of Record" executed by respondent Cyr under date of August 13, 1948, and filed herein on March 15, 1949, consisting of:

1. Claim for Compensation (Form US—262), dated April 19, 1948;
2. Transcript of testimony at hearing before deputy commissioner on June 15, 1948, and Exhibits A, B, C, D, E, and F attached thereto;
3. Compensation Order of respondent Cyr, dated July 8, 1948;

be considered as offered and received in evidence. It is further stipulated that respondent's motion to dismiss may be considered as resubmitted for decision on the evidence introduced pursuant to this stipulation and the pleadings and briefs heretofore filed in the matter.

Dated: September 27, 1949.

LEONARD, HANNA and
BROPHY,

By /s/ IVAN A. SCHWAB,
Attorneys for Complainants.

/s/ FRANK J. HENNESSY,
U. S. Attorney,
Attorney for Respondent.

[Endorsed]: Filed October 6, 1949.

District Court of the United States, Northern
District of California, Southern Division

No. 28237-H-L

At A Stated Term of the Southern Division of the United States District Court for the Northern District of California, held at the Court Room thereof, in the City and County of San Francisco, on Tuesday, the 27th day of December, in the year

of our Lord one thousand nine hundred and forty-nine.

Present: The Honorable Dal M. Lemmon,
District Judge.

ORDER GRANTING RESPONDENT'S
MOTION TO DISMISS

This case having heretofore been re-submitted to the Court pursuant to Stipulation filed Oct. 6, 1949, It Is Ordered that Respondent's Motion to Dismiss herein is granted.

In the United States District Court for the Northern District of California, Southern Division
No. 28237-H

J. GORDON TURNBULL and SVERNDRUP and
PARCEL, and U. S. FIDELITY AND GUARANTY COMPANY,

Complainants,

vs.

ALBERT J. CYR, Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency,

Respondent.

NOTICE OF APPEAL

Notice is hereby given that J. Gordon Turnbull and Sverndrup and Parcel and United States Fidelity and Guaranty Company, complainants in the above-entitled action, hereby appeal to the United

States Court of Appeals for the Ninth Judicial Circuit from that order sustaining motion of the respondents to dismiss the bill of complaint, entered herein on the 28th day of December, 1949, and from the whole of said judgment and each and every part thereof.

LEONARD, HANNA and
BROPHY,

Attorneys for Complainants.

/s/ EDMUND D. LEONARD,

/s/ IVAN A. SCHWAB.

Dated at San Francisco this 17th day of February, 1950.

[Endorsed]: Filed February 17, 1950.

[Title of District Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL UNDER RULE 75

Complainants hereby designate that the whole of the record, proceeding, and evidence be contained in the record on appeal herein.

LEONARD, HANNA and
BROPHY,

Attorneys for Complainants.

/s/ EDMUND D. LEONARD,

/s/ IVAN A. SCHWAB.

Dated at San Francisco this 17th day of February, 1950.

Affidavit of Service by Mail attached.

[Endorsed]: Filed February 17, 1950.

Federal Security Agency, Bureau of Employee's
Compensation, 13th Compensation District

Case No. DB-14C-8-20—28237-H

In the Matter of Claim for Compensation under the
Acts of Congress of August 16, 1941 and De-
cember 2, 1942 extending the Longshoremen's
and Harbor Workers' Compensation Act to em-
ployees on Public Works of the United States.

LOIS G. M. ROSS, widow of Kenneth R. Ross and
John Gary Ross, minor child,

Claimants,

vs.

J. GORDON TURNBULL and SVERNDRUP
AND PARCEL,

Employer,

U. S. FIDELITY AND GUARANTY COMPANY,
Insurance Carrier.

CERTIFICATION OF RECORD

This is to certify that I am the duly appointed,
qualified and acting Deputy Commissioner of the
Federal Security Agency, Bureau of Employees'
Compensation under the Longshoremen's and Har-
bor Workers' Compensation Act and the Defense
Bases Compensation Acts (Acts of Congress of
August 16, 1941 and December 2, 1942) for the
Thirteenth Compensation District, comprising the

State of California and other portions of the United States;

That there has recently been pending before me as said Deputy Commissioner, claim for death benefits transferred to me under said Acts from the 14th Compensation District of Lois G. M. Ross, Widow, and John Gary Ross, Minor Child, against J. Gordon Turnbull and Sverdrup and Parcel, employers and U. S. Fidelity and Guaranty Company, insurance carrier, file no. DB-14C-8-20;

That the attached are originals or true and correct copies of pleadings, transcript of testimony and exhibits in said file, as listed below, being a copy of the entire file therein so far as relevant to a review of the above proceedings, as follows:

1. Form US 262 — Claim for Compensation in Death Case by Widow and/or Children under the Age of Eighteen
2. Transcript of Testimony of Hearing of June 15, 1948 with attached exhibits A, B, C, D, E, F.
3. Copy of Compensation Order awarding death benefits dated July 8, 1948.

Given under my hand at San Francisco, California this 13th day of August, 1948.

/s/ ALBERT J. CYR,

Deputy Commissioner,
13th Compensation District.

United States Employees' Compensation
Commission

Case No. DB-14C-8-20

Office of Deputy Commissioner
Administering Longshoremen's and Harbor
Workers' Compensation Act

Claim for Compensation in Death Case by Widow
and/or Children Under the Age of Eighteen

I hereby make claim for compensation arising out of the death of my husband, Kenneth R. Ross, who died on March 30, 1948 at Fitz-Simons Hospital, Denver, as a result of injury sustained on 8-21-43, at Alaska, in the employ of J. Gordon Turnbull & Sverdrup & Parcel & Co., whose address is (blank). Deceased left the following children who were under 18 years of age at the time of his death: Names: John Gary Ross, Date of Birth: Sept. 2, 1947.

These questions should be answered where the widow is claiming compensation.

Widow was born on May 21, 1921 at Shellmouth, Manitoba, Canada.

Widow was married to the deceased on 5th day of October, 1946 at Tiajuana, Mexico by Justice of the Peace.

Last physician or hospital: Capt. Ritter, Fitz-Simons Hospital.

Name of undertaker: Olinger Mortuary. Address: 16th & Boulder St., Denver, Colo.

Amount of undertaker's bill: \$100.00. Amount paid, if any: Paid.

By whom paid: Veterans Administration Bureau, Ottawa, Can., thru V. A. in Denver.

Dated this 19th day of April, 1948.

/s/ LOIS G. M. ROSS,

Address: 2053 Galen St., Aurora, Colo.

Affidavit

State of Colorado,
City and County of Denver—ss.

On this 19th day of April, A.D. 1948, personally appeared before me the above-named Lois G. M. Ross and made oath that the answers by Lois G. M. Ross above named and subscribed are true.

[Seal] /s/ ELEANORE E. LANG,

Notary Public.

Address: c/o U. S. Natl. Bank, Denver, Colo.
My Commission Expires November 14, 1951.

Received April 26, 1948.

Federal Security Agency, Bureau of Employees'
Compensation, 13th Compensation District

Case No. DB-14C-8-20

In the Matter of the Claim for Compensation Under
the Acts of Congress of August 16, 1941 and
December 2, 1942, extending the Longshore-
men's and Harbor Workers' Compensation Act.

LOIS G. M. ROSS, Widow of Kenneth R. Ross
and John Gary Ross, minor child,

Claimants,

vs.

J. GORDON TURNBULL and SVERDRUP &
PARCEL,

Employer,

U. S. FIDELITY AND GUARANTY COMPANY,
Insurance Carrier.

COMPENSATION ORDER AWARD OF
DEATH BENEFIT

Compensation Order having been filed herein on
April 26th, 1946 awarding to Kenneth R. Ross com-
pensation benefits for temporary total disability at
the weekly rate of \$25.00 and the claimant having
died as the result of his injury on March 30th, 1948
and the claimant herein, Lois G. M. Ross, having
filed a claim for death benefit as the Widow of
Kenneth R. Ross and a hearing having been held on

such claim and the case submitted for decision, the Deputy Commissioner makes the following:

Findings of Fact

That the employer and insurance carrier paid to Kenneth R. Ross compensation benefits to and including March 19, 1948, 225 weeks at \$25.00 a week amounting to \$5625.00; that there is an additional amount of \$35.71 due for the period March 20, 1948 to and including March 29, 1948, 1-3/7 weeks; that Lois G. M. Ross, born May 21, 1921 is the widow of the deceased herein by virtue of a common-law marriage contracted in the State of Colorado and is entitled to death benefit of \$13.13 a week beginning with March 30, 1948; that John Gary Ross, born September 2, 1947, is the minor son of Kenneth Ross and Lois G. M. Ross and is entitled to a benefit of \$3.75 a week beginning with March 30, 1948 payable to Lois G. M. Ross as his natural guardian; that the claimant's attorney, Lawrence M. Henry has rendered legal services to the claimant in the prosecution of her claim for which a fee is approved in the amount of \$50.00 and a lien granted therefor upon compensation herein awarded.

Upon the foregoing facts the Deputy Commissioner makes the following:

Award

That the employer, J. Gordon Turnbull and Sverdrup & Parcel, and the insurance carrier, U. S. Fidelity and Guaranty Company shall pay to the

claimant, Lois G. M. Ross, compensation and death benefits as follows:

The sum of \$35.71 representing compensation benefits due to Kenneth R. Ross on the date of his death; beginning with March 30, 1948, \$16.88 a week in installments each two weeks representing death benefit of \$13.13 a week due to the widow and \$3.75 a week due to the minor son, John Gary Ross, less however, the sum of \$50.00 to be deducted therefrom and paid to the claimant's attorney, Lawrence M. Henry, as his lien for attorney's fee.

Given under my hand at San Francisco, California this 8th day of July, 1948.

/s/ ALBERT J. CYR,

Deputy Commissioner,

13th Compensation District.

AJC:mh:el

[Endorsed]: Filed March 15, 1949.

Federal Security Agency

Bureau of Employees' Compensation

Before Albert J. Cyr, Deputy Commissioner

Claim DB-14C-8-20

June 15, 1948

In the Matter of the Claim for Compensation Under the Longshoremen's and Harbor Workers' and Defense Bases Act as Extended by Acts of Congress of August 16, 1941, and December 2, 1942.

LOIS G. M. ROSS,

Claimant,

vs.

J. GORDON TURNBULL and SVERDRUP &
PARCEL,

Employer,

U. S. FIDELITY AND GUARANTY COMPANY,
Carrier.

TRANSCRIPT OF TESTIMONY AT HEARING

Now on this Tuesday, June 15, 1948, at 2:00 p.m. in the Petit Jury Room No. 337, of the Denver Post Office Building, Denver, Colorado, this matter came on for hearing:

Before: Albert J. Cyr, Deputy Commissioner of the 13th Compensation District.

Appearances: Claimant present in person, and by her attorney, Lawrence M. Henry, Esq., 618 Symes Building, Denver, Colorado.

Raymond A. Wagner, Esq., attorney for defendants, 929 University Building, Denver, Colorado.

Whereupon the following proceedings were had, to-wit:

Commissioner: This will be a hearing on application filed by Mrs. Lois G. M. Ross, as the widow of Kenneth R. Ross who died March 30, 1948 from, according to the death certificate tuberculous meningitis.

At the time of his death, Mr. Ross was on compensation under the defense bases act, because of a tuberculous condition, which originated during the period of employment in the Yukon Territory in the Western Dominion of Canada.

This tuberculosis had been accepted as compensable, and Mr. Ross received compensation from October 27, 1943 to March 19, 1948; 225 weeks at \$25.00 a week; total amount \$5,625.00.

The claim before us today is Mrs. Ross' claim as the widow of Kenneth Ross. [1*]

LOIS G. M. ROSS

a witness on behalf of claimant, being first duly sworn, testified as follows:

Interrogation

By Commissioner:

Q. Give us your full name for the record, please?

A. Lois Gwendoline Muriel Ross.

* Page numbering appearing at bottom of page of original Reporter's Transcript.

(Testimony of Lois G. M. Ross.)

Q. And your present address?

A. 2053 Galena Street, Aurora.

Q. Is that going to be more or less your permanent address, for the time being? A. Yes.

Q. You were married to Kenneth Ross?

A. Yes, sir.

Q. And the date of the marriage was October 5, 1946?

Mr. Henry: If your Honor please, we will have to rely on the common-law marriage to establish her claim as widow in this matter. We are ready to establish it from the reputation in the community as being man and wife, by documentary evidence, and by testimony of witnesses.

Commissioner: You take the witness then.

Direct Examination

By Mr. Henry:

Q. Are you the wife of Kenneth Robert Ross?

A. Yes. [2]

Q. When did you and Mr. Ross come to Denver, Colorado? A. In June, 1947.

Q. Where did you live in Denver, Colorado?

A. 1933 Downing.

Q. And during your stay in Colorado, did you and Kenneth Robert Ross consider yourselves as man and wife, and was there such an agreement?

A. Yes.

Q. What was the name of your landlady at the address previously given? A. Mrs. Reid.

(Testimony of Lois G. M. Ross.)

Q. Pardon? A. Mrs. Reid.

Q. Do you know her first name?

A. Alice, I believe it is.

Q. Did you and Mr. Ross have any common friends other than your landlady who might know of your relationship as man and wife?

A. Yes.

Q. Could you name one or more?

A. I could name several, but one, Mr. Jesse Craft.

Q. Do you know his address?

A. 950 Acoma Street.

Q. Are both Mrs. Reid and Mr. Craft here today? A. Yes. [3]

Q. Were you and Mr. Ross the parents of a child, the name of which was given as John Gary Ross? A. Yes, John Gary.

Q. Where was that child born?

A. In St. Luke's Hospital, Denver, Colorado.

Q. When was the child born?

A. September 2, 1947.

Q. I believe there is already in evidence a copy of this birth certificate. When the child was born, were you admitted to the hospital as Mrs. Ross?

A. Yes.

Mr. Henry: If your Honor please, at this time we would like to introduce a record; certified letter of St. Luke's Hospital, indicating Mrs. Ross was admitted to that hospital on September 2, 1947, and was discharged from the hospital September 8, 1947,

(Testimony of Lois G. M. Ross.)

after the baby had been born at 8:10 a.m. September 2, 1947. That the records there indicate Mr. Kenneth Ross was the husband of the patient, and the legitimate father of the baby. Attached to that record, or attached to that letter, as stated in the letter, is a copy of the patient's ledger with the information that was given to their admitting employee.

(Document handed to Mr. Wagner.)

Mr. Wagner: This does not indicate that Mr. Ross in any way indicated he was the husband. I thought perhaps the certificate would indicate that he procured admission to the hospital [4] as the husband.

Mr. Henry: Mrs. Ross could testify to that, however, I was under the impression that admission record would show some signature.

Witness: But I don't—

Q. That is the only record, is that true?

A. Well there is a duplicate of that sheet.

Mr. Wagner: Of course we would have to offer this in evidence on the basis it does not properly show any admission on his part that he was the husband of the claimant.

Commissioner: I will accept the records discussed, as Exhibit "A," and your objections noted to it and the reasons therefor, are part of the record.

(Testimony of Lois G. M. Ross.)

EXHIBIT "A"

Saint Luke's Hospital
Denver 5, Colorado

June 15, 1948.

To Whom It May Concern:

This is to certify that Mrs. Lois Ross was admitted to St. Luke's Hospital, Denver, Colorado, as a maternity patient on September 2, 1947, at 1:35 a.m., patient admission #172604, and was discharged from the hospital September 8, 1947 at 11:20 a.m. A baby boy was born to Mrs. Ross at 8:10 a.m., September 2, 1947.

Our records indicate that Mr. Kenneth Ross was the husband of the patient and the legitimate father of the baby.

Attached please find a copy of the patient's ledger with the information at the top that was given to our admitting employee.

Yours very truly,

/s/ ROY R. PRANGLEY,
Superintendent.

Subscribed and sworn to before me this 15th day
of June, 1948.

[Seal] /s/ R. K. MORTENSEN,
Notary Public.

My Commission expires May 4, 1949.

(Testimony of Lois G. M. Ross.)

LMT FOR RJC	#172609 Babe Boy Born 9-2-47 8.10 am Day Tuesday
Rm. 132 Rate 6.50	Name—Ross, Mrs. Lois Age 25
To be paid by Husband: Mr. Kenneth Ross	Address—1933 Downing Phone MA 9772
Employer	Phys. Dr. E. E. Taylor Interne Dr. Jardine Obst Dept
Writer	Date admitted 9-2-47 Time 1.35 am Adm. No. 172604
	Date discharged 9-8-47 Time 11:20 am

Date	Description	Charges	Credits	Balance
Sep 2	Room	6.50		
Sep 2	Drugs	.30		
Sep 2	Lab	5.00		
Sep 2	Tel—	.05		11.85
Sep 3	Room	6.50		
Sep 3	Drugs	.75		
Sep 3	Delv	15.00		
Sep 3	Dresng	5.00		
Sep 3	Anes	10.00		
Sep 3	Drugs	.10		
Sep 3	Tel—	.05		49.25
Sep 4	Room	6.50		
Sep 4	Drugs	.75		56.50
Sep 5	Room	6.50		63.00
Sep 6	Room	6.50		
Sep 6	Drugs	.35		69.85
Sep 7	Room	6.50		76.35
Sep 8	Room	3.25		
Sep 8	Tel—	.10		
Sep 8	Drugs	.50		
Sep 8	Pencln	8.00		
Sep 8	Drugs	.15		
Sep 8	Drugs	.20		
Sep 8	Tx	.18		88.73
Sep 8	Cash		78.35—	10.38
Sep 8	Disc		1.35—	9.03
Jun 15	Cash		9.03—	.00

THE ST. LUKE'S HOSPITAL ASSOCIATION

[In ink—Duplicate Copy]

(Testimony of Lois G. M. Ross.)

Mr. Henry: Also, as being indicative of their reputation among their friends, I should like to introduce into evidence, if there is no objection, letters received from individuals addressed to Mr. and Mrs. Ross at the address stated by Mrs. Ross, as being the husband of the claimant at the time they were living in Denver.

Mr. Wagner: I wouldn't know until I see the letter.

Q. May I have these letters——

A. They are not from Denver.

Q. They are addressed to you in Denver?

A. Some of them are, and some in Colorado Springs.

Q. May I have them marked? (Witness hands documents [5] to counsel.) I would like to offer the envelopes only, and withdraw the messages inside, if you have no objection.

Mr. Wagner: I would object to this on the basis, it does not in any way connect the claimant Lois Ross with Mrs. Ken Ross.

Mr. Henry: I offer them only upon the basis of indication the deceased was married, to Mrs. Ross, claiming his marriage to her, as merely supporting evidence that he was married to some one.

Commissioner: Will you pick them out? (Documents handed to witness.)

Q. Mrs. Ross, upon the decease of your alleged husband Kenneth Ross, did you handle the arrangements for his funeral?

(Testimony of Lois G. M. Ross.)

A. Yes. I have the receipt.

Q. You do have a receipt? A. Yes.

Q. For funeral expenses paid for by yourself?

A. Well I paid for the vault and the burial was through the Veterans' Administration.

Q. How was the funeral paid?

A. Through the Veterans' Administration.

Mr. Henry: I would like now to offer in evidence, the receipt from the Crown Hill Cemetery Association, from Mrs. Lois Ross as the wife; she paid \$45.00 for the vault, on April 1, 1948. [6]

Mr. Wagner: Of course I would object on the same grounds. It doesn't prove any marriage between Lois Ross and Kenneth Ross.

Commissioner: It will be accepted in evidence as Exhibit "B" and the objection of the defendants noted.

EXHIBIT "B"

Crown Hill Cemetery Association
324 Denham Building

No. 136694

Date: 4-1-48

Received of Mrs. Lois Ross

Address 2053 Galena

On acct. (vault).

\$45.00—Forty-five & no 100.

CROWN HILL CEMETERY
ASSOCIATION,

By /s/ [Indistinguishable.]

(Testimony of Lois G. M. Ross.)

Q. Mrs. Ross, did you at all times during your stay in Denver, and Colorado, while Mr. Ross was living, and after his decease, hold yourself out as being married to Kenneth Ross?

A. Yes. I have lots of letters showing I was.

Q. I think that is all the testimony I want to offer from Mrs. Ross.

Commissioner: I have a question.

Interrogation

By Commissioner:

Q. Mrs. Ross, in the burial expenses you had in connection with the burial and funeral and so on, was this \$45.00 used for the purchase of the vault?

A. Yes.

Q. All other expenses were paid by the Veterans' Bureau? A. Yes.

Mr. Henry: May I ask another question?

Further Direct Examination

By Mr. Henry:

Q. Where did Mr. Ross die? [7]

A. Fitzsimons Hospital.

Mr. Henry: At this time I would like to offer into evidence a letter from Department of the Army, Fitzsimons General Hospital, dated the 1st of April, 1948 to Mrs. Lois Ross, expressing regret upon the death of her husband, the late Kenneth R. Ross, and signed by R. C. Warner, 1st Lieutenant, Medical Service Corps.

(Document handed to Mr. Wagner.)

(Testimony of Lois G. M. Ross.)

Mr. Wagner: I would make the same objection, if this is offered to prove the relationship of husband and wife.

Commissioner: It is received as Exhibit "C," with the objection noted.

EXHIBIT "C"

Department of the Army
Fitzsimons General Hospital
Denver 8, Colorado

RCW:ILR

In Reply Refer to Medeo-R 201-Ross, Kenneth R.
(BVA)

1 April 1948

Mrs. Lois Ross
2053 Galena Street
Aurora, Colorado

Dear Mrs. Ross:

May we express our sincere sympathy to you in the loss of your husband, the late Kenneth R. Ross, who died March 30, 1948, while a patient in this hospital.

It will perhaps be a source of comfort to you to know that he received every possible care and attention during his illness here.

Sincerely yours,

/s/ R. C. WARNER,

1st Lieutenant, Medical Service Corps, Asst. Registrar.

(Testimony of Lois G. M. Ross.)

Mr. Henry: I would like to call Mrs. Reid.

Commissioner: Just a second. I will put in evidence, Exhibit "D," a certified copy of the death certificate, and also, Exhibit "E," certified copy of birth certificate of John Gary Ross. You may cross-examine Mr. Wagner.

STATE OF COLORADO
STANDARD CERTIFICATE OF DEATH
BUREAU OF VITAL STATISTICS

State File No. **3327**
Registrar's No. **74** Dist. **I**

PLACE OF DEATH:
County **Adams**
City or town **Denver**
Name of hospital or institution:
Fitzsimons General Hospital
Length of stay: In hospital or institution **26 da**
this community _____ years

2 USUAL RESIDENCE OF DECEASED:
(a) State **California** (b) County **San Bernardino**
(c) City or town **Redlands**
(d) Street No. **908 Ohio**
(e) If foreign born, how long in U. S. A? _____ years

a) FULL NAME **ROSS, Kenneth R.**
b) If veteran, name war **WW II**
Sex **Male** 5. Color or race **White**
(b) Name of husband or wife **Lois Ross**
Birth date of deceased **January 15 1917**
AGE: Years **31** Months **2** Days **15**
Birthplace **La Junta Colorado**
Usual occupation **None**
12. Name **Reuben T. Ross**
13. Birthplace **Neodesha Kansas**
14. Maiden name **Anna W. Swanson**
15. Birthplace **Stillwater Oklahoma**

MEDICAL CERTIFICATION
20. Date of death: Month **March** day **30**
year **1948** hour **3** minute **00 AM**
21. I hereby certify that I attended the deceased from **March 4 1948** to **March 30 1948**:
that I last saw him alive on **March 30 1948**:
and that death occurred on the date and hour stated above. Duration
Immediate cause of death **Tuberculous meningitis 49 da**
Due to **Chronic general military tuberculosis 3 mo.**
Due to **Pulmonary tuberculosis 6 1/2 yr**
Other conditions _____
Major findings Of operations _____
Or autopsy **Same as above**

(a) Informant's own signature _____
(b) Address **Fitzsimons GH, Denver, Colorado**
(c) Place: burial or cremation **Burial** (b) Date thereof **April 2 1948**
102-77 **Crown Hill Cemetery**
Denver, Colorado
(a) Signature of funeral director **M Clinger Mortuary**
(b) Address **Denver, Colorado**
(a) **April 8, 1948** (b) **Neola, Mo.**

22. If death was due to external causes, fill in the following:
(a) Accident, suicide, or homicide (specify) _____
(b) Date of occurrence _____
(c) Where did injury occur? _____
(d) Did injury occur in or about home, on farm, in industrial place, in public place? _____
While at _____ (c) Means of injury _____
23. Signature **Clavin Fox** (M. D. or other) **M**
Address **Fitzsimons GH, Denver, Colo** Date signed **4-6**

SMITH D

STATE OF COLORADO, SS:

I hereby certify that the above is a true, full and correct copy of the original certificate, in my custody

Elveta C. Ingers

STATE OF COLORADO
STANDARD CERTIFICATE OF BIRTH

State File No. 24517
Registrar's No. 858 Dist. 51

PLACE OF BIRTH:

County Denver
City or town Denver
(If outside city or town limits write RURAL)
Name of hospital or institution:
St Luke's Hospital
(If not in hospital or institution give street number or location)

2. USUAL RESIDENCE OF MOTHER:

(a) State Colorado
(b) County Denver
(c) City or town Denver
(If outside city or town limits write RURAL)
(d) Street No. 1933 Downing St
(If rural give location)

Full name of child John Gary Ross
Sex: M 6. Twin or triplet _____
If so—born 1st, 2nd or 3rd _____

4. Date of birth Sept. 7, 194
(Month) (Day) (Year)

FATHER OF CHILD

1. Full name Kenneth Robert Ross
2. Residence 1933 Downing St.
3. Color or race W 10. Age at time of this birth 30 yrs.
4. Birthplace La Junta, Colorado
(City, town or county) (State or foreign country)
5. Usual occupation Writer
6. Industry or business writing

MOTHER OF CHILD

14. Full maiden name Lucia Dwendoline Ross
15. Residence 1933 Downing St
16. Color or race W 17. Age at time of this birth 26 yrs.
18. Birthplace Shellmouth, Manitoba, Canada
(City, town or county) (State or foreign country)
19. Usual occupation Registered Nurse
20. Industry or business Private Duty

7. Children born to this mother at the time of this birth:

(a) How many other children of this mother are now living, at the time of this birth? 0
(b) How many other children were born alive but are now dead, at the time of this birth? 0
(c) How many children were born dead, at the time of this birth? 0

8. I hereby certify that I attended the birth of this child who was born alive at the hour of 12 m. on the date above stated and that the information given was furnished by J. D. Ross, related to this child as mother

9. Date received by State registrar 9-12-47
local
10. Registrar's own signature: E. L. Myers
11. Date on which given name added M by JA Registrar

12. Attendant's signature: E. L. Myers
13. M. D., or midwife _____ Date signed 9-5-47
Address Republic Bldg.

STATE OF COLORADO, SS:

I hereby certify that the above is a true, full and correct copy of the original certificate, in my custody and now available to my office.

Witness my hand and official seal at Denver, in said State, this 18th day of May, A. D. 1947.

R. L. Moore, M.D.
STATE REGISTRAR OF VITAL STATISTICS

K. A. Martin
DEPUTY STATE REGISTRAR OF VITAL STATISTICS

(Testimony of Lois G. M. Ross.)

Cross-Examination

By Mr. Wagner:

Q. In the claim for compensation dated April 19, 1948 it appears that you were married at Tiajuana, Mexico, on the 5th of October, 1946, before a Justice of the Peace. Is that correct?

A. I would like to withdraw that statement.

Q. That isn't so? A. No. [8]

Q. This was sworn to before a notary public was it not? A. Yes.

Q. Do you have any where, any copy of an application, or letter signed by Kenneth Ross, in which he stated that he was married? A. To me?

Q. Yes. In some of these applications, it requires an answer as to whether a man is married, single, and so forth. Now he did sign one in 1944, and of course he said he was single. Of course that happened before the time that we are talking about now, and I was wondering if you had any similar paper or application— A. No.

Q. —or anything in which that question was answered by him, and which he signed?

A. The only thing is, they admitted me to the hospital before the baby was born, and this clerk got the information from him.

Q. Were you able to give the clerk anything there?

A. No, apparently it had been decided, I don't know. He has the initials; the clerk's initials were on the admission blank.

(Testimony of Lois G. M. Ross.)

Q. Were they able to trace him, the hospital people, to determine who he was?

A. No, they said; it was at 1:30 at night, and probably [9] a substitute clerk or something.

Q. These papers which your attorney has offered in evidence are the sole written evidence of the marriage? A. Yes.

Q. That is all.

Interrogation

By Commissioner:

Q. Mrs. Ross, you never went through any kind of a marriage ceremony? A. No.

Q. What were the circumstances under which you started living together as husband and wife? This is personal, but we have to get personal sometimes. A. As you know, he was sick.

Q. How? A. He was sick——

Q. Yes.

A. ——and he didn't have any one to look after him, and so——

Q. Did you start to look after him?

A. Well, yes.

Q. And about what time was that?

A. That was in October in '46.

Q. When he was still in California?

A. Yes. [10]

Q. Was he in a hospital at that time?

A. No.

Q. In a sanitarium? A. No.

Q. He was living in Monrovia?

(Testimony of Lois G. M. Ross.)

A. He was in a sanitarium there. He left, he was in Redlands.

Q. Are you from Redlands yourself?

A. No.

Further Cross-Examination

By Mr. Wagner:

Q. Where did you first meet Mr. Ross?

A. In Canada when he was in the hospital with us.

Q. What hospital?

A. Fort Sand—Saskatchewan.

Q. Was there any break in that relationship from October 1946, until the time of Mr. Ross' death?

A. No.

Commissioner: As I understand it, you met him when he was in a sanitarium in Saskatchewan, and you came to see him in California in 1946?

Witness: That is right.

Commissioner: And you started living together about the time you got down to California?

A. Yes. [11]

Commissioner: And you have been living together from then until his death?

Witness: That is right.

Commissioner: That is all.

Mr. Wagner: How many children do you have?

Witness: One son.

Mr. Wagner: And how old is the child now?

Witness: He is nine and a half months.

(Testimony of Lois G. M. Ross.)

By Commissioner:

Q. You had never been married before had you?

A. No.

Q. How about Mr. Ross; he had never been married either? A. No.

Q. When did you come to Colorado with Mr. Ross? A. In June.

Q. June, 1947? A. '47.

Q. And you stayed in the State of Colorado with him until his death in March, 1948?

A. That is right.

Mr. Wagner: When was Mr. Ross admitted to Fitzsimons Hospital?

Witness: March 4th.

Mr. Wagner: Of this year? [12]

Witness: Yes. He was in a sanitarium for a month in Colorado Springs.

Mr. Henry: Were you with him in Colorado Springs? A. Yes.

Mr. Wagner: And the child was born in Colorado Springs? A. No, he was born in Denver.

Mr. Wagner: Oh, in Denver.

ALICE REID

a witness on behalf of claimant, being first duly sworn, testified as follows:

Interrogation

By Commissioner:

Q. What is your name? A. Mrs. Reid.

Q. Your first name? A. Alice.

(Testimony of Alice Reid.)

Q. Alice Reid? A. Yes.

Q. And your address? A. 1933 Downing.

Q. That is in Denver? A. Yes.

Direct Examination

By Mr. Henry:

Q. Mrs. Reid, what is your occupation or means of [13] livelihood?

A. We have an apartment house.

Q. And what is the address of that?

A. 1933 Downing.

Q. Did you manage that apartment house between the days of June of 1947 and March of 1948?

A. Yes.

Q. During that time, did you ever become acquainted with the lady here to your left, known as Mrs. Ross? A. Yes, sir.

Q. Would you tell the circumstances of your acquaintanceship with her?

A. When Mrs. Ross came, it was the latter part of May. Mr. Ross was to come a few weeks later; it was in June.

Q. Of what year? A. Of '46.

Q. '46?

A. Yes, sir, she was a nurse; his nurse, and she stayed until in August of '47, and Mr. Ross joined her there in June. She came just a few days before he got there.

Q. And during that period that you have just mentioned, did you at all times understand that Mr. and Mrs. Ross were married to each other?

(Testimony of Alice Reid.)

A. Yes.

Q. Did they tell you they were man and wife?

A. Well it was my understanding before he arrived, Mr. Ross was coming, and that was the means of the explanation, the day he came, of course.

Q. Was he introduced to you as the husband of—

A. She was on duty that night, and he came to the house and was introduced to me. She was on duty at the hospital.

Q. He introduced himself? A. Yes.

Q. Did he at that time say he was related to Mrs. Ross? A. Yes.

Q. What did he say?

A. He said he was the husband.

Q. The husband of the lady that took that apartment at 1933 Downing? A. Yes.

Q: How did they pay their rent?

A. By the month.

Q. By the month?

A. Uh huh. I say, it was by the month; it was a monthly basis, it wasn't paid always by the month, but it was a monthly rate.

Q. And in receipting for that money, to whom were the receipts made?

A. Well, to Mrs. Ross.

Q. To Mrs. Ross? [15] A. Yes.

Q. Do you know the general reputation in the community as to their relationship, based upon your knowledge of the two, and the neighbors?

(Testimony of Alice Reid.)

A. Well they were very fine people as far as—I had never known them until they came there, but while there they were very fine.

Q. But with relation to their mutual associations, what was the understanding that the neighborhood had, concerning that?

A. As man and wife. Is that what you mean?

Q. Yes, as man and wife. The other members of your apartment house too, understood Mr. and Mrs. Ross were married?

A. Yes.

Q. I believe that is all.

Commissioner: When Mrs. Ross came to you and applied for an apartment, how did she introduce herself? As Mrs. Ross?

Witness: As Mrs. Ross, yes.

Commissioner: She never gave you any other name but Mrs. Ross?

Witness: No.

Mr. Henry: We do have some rental receipts made out to Mr. and Mrs. Ross, which I think are not necessary.

Mr. Wagner: I don't think there is anything further I can ask. [16]

Commissioner: You are excused, thank you.

Mr. Henry: I would like to call Mr. Craft.

JESSE CRAFT

a witness called on behalf of claimant, being first duly sworn testified as follows:

Interrogation

By Commissioner:

- Q. What is your name? A. Jesse Craft.
 Q. And your address? A. 930 Acoma.
 Q. That is in Denver? A. Yes.

Direct Examination

By Mr. Henry:

Q. Mr. Craft, are you acquainted with Mrs. Lois Ross?
 A. I am, yes, sir.

Q. How long have you known her?

A. Well it has been several months. I wouldn't care to state just what month they started.

Q. All right. Would you state how you came to know her?

A. I operated a service station at 635 East 20th Avenue and Mr. Ross traded with me.

Commissioner: Mr. Ross traded with you?

Witness: Yes. [17]

Q. Did you know both Mr. and Mrs. Ross?

A. That is right.

Q. Did they appear at your service station together at any time?

A. Yes, sir, quite frequently

Q. And did you become rather closely acquainted with either or both of them?

A. Well, friendly, yes. They were very friendly people.

(Testimony of Jesse Craft.)

Q. And with relation to the marital status of each; what was your impression during this time?

A. I assumed they were married. In fact, I was introduced to her as his wife, by him.

Q. Did Mr. Ross introduce you to this Mrs. Ross as his wife? A. That is correct.

Q. And did those whom you knew, that also knew Mr. and Mrs. Ross, understand they were married? In other words, what was the reputation they had in the community, if you know it?

A. I don't know it. As far as I am concerned, they were married. That is all I care to state.

Q. Did they associate together enough for you to establish the idea they were married?

A. That is right, yes, sir.

Q. I believe that is all. [18]

Cross-Examination

By Mr. Wagner:

Q. Over how long a period of time did they come to your station?

A. Well, several months. It was warm weather, sometime that summer he started coming in.

Q. In 1947? A. Yes, sir.

Q. That is all.

Commissioner: That is all.

Mr. Wagner: Could I ask Mrs. Ross a question?

LOIS G. M. ROSS

recalled to the stand for further

Cross-Examination

By Mr. Wagner:

Q. Was there some particular reason why you didn't have a marriage ceremony?

A. There was, but I don't know what it is.

Q. You don't? A. No.

Q. Had you ever mentioned the subject to him?

A. Yes.

Q. And what did he say?

A. He said we would go to Mexico and get married.

Q. He had the intention of going through a ceremony? [19] A. Yes.

Q. Did he keep postponing it?

A. No, he was too sick to go.

Commissioner: You know of no reason why a marriage ceremony could not have been performed in the states?

Witness: No, I don't.

Mr. Henry: Even though you anticipated sometime, entering into a ceremonial marriage, did you and Mr. Ross, by his actions, did you consider yourselves as married?

A. Yes. We considered ourselves as married.

Mr. Wagner: You never really gave up the idea of having a ceremony sometime or other, did you?

A. No.

Mr. Wagner: That is all.

(Testimony of Lois G. M. Ross.)

Commissioner: Are you a citizen of the United States?

Witness: No, not yet.

Commissioner: You are a citizen of Canada?

Witness: Yes.

Commissioner: Do you expect at any time to return to Canada?

Witness: No.

Commissioner: You have no intention of returning to Canada?

Witness: No.

Commissioner: All right, that is all. [20]

Mr. Henry: That is all, as far as the testimony is concerned.

Chapter 107 of the 1935 Colorado Statutes Annotated:

Section 1. "Marriage is considered in law a civil contract, to which the consent of the parties is essential."

Then citing our case law, I would like to cite *Taylor vs. Taylor*, 50 Pacific, 1049; 10 Colorado Appeals, 303, to the effect: "Under the laws of Colorado marriage is a civil contract, and while the statutes provide for licenses, certificates, record and authority to perform the marriage ceremony, a marriage is not void because it is not contracted in accordance with these provisions or was contracted in violation of them."

In *Klipfel's Estate vs. Klipfel*, 92 Pacific, 26; 41 Colorado, page 40, the court said: "A marriage

contract between parties capable of contracting, possessing clearly, the one essential prerequisite of mutual consent, followed by cohabitation as husband and wife, and such other attendance circumstances as are necessary to constitute the common-law marriage may be valid and binding although no solemnization has been attempted.”

Then with relation to whether or not the anticipated ceremonial marriage would invalidate the present contract, which is necessary to a common-law marriage, the Colorado court in *Moffat Coal Company, vs. Industrial Commission*, 118 Pacific 2nd, 769; 108 Colorado, 388, a workmen's compensation case, stated: “There is nothing inconsistent in fixing the status of marriage per verba de praesenti and agreeing that the relationship then constituted shall be publicly solemnized at a future date.”

Commissioner: All right. Off the record.

I am accepting in evidence a group of envelopes, consisting of seven, as Exhibit “F,” addressed to both Mr. and Mrs. Kenneth Ross.

EXHIBIT F

[7 envelopes addressed to Mr. and Mrs. Ross.]

Case submitted.

(2:47 p.m. case submitted.)

CERTIFICATE

State of Colorado,
City and County of Denver—ss.

I, C. F. Jeffers, a Certified Shorthand Reporter of Denver, Colorado, do hereby certify that the above and foregoing pages, 1 to 27, is a full, true and correct transcript of my notes taken in the matter of Lois G. M. Ross, Claimant, against J. Gordon Turnbull & Sverndrup & Parcel, Employer, and U. S. Fidelity & Guaranty Company, Carrier, Claim DB-14C-8-20, together with the portions of exhibits ordered copied by Deputy Commissioner, at hearing in Denver, Colorado, Tuesday, June 15, 1948.

Dated this 19th day of June, A.D. 1948, at Denver, Colorado.

/s/ C. F. JEFFERS, C.S.R.,
1558 Marion Street,
Denver 6, Colorado.

Exhibits Attached to Original Transcript.

Received and filed June 23, 1948.

In the District Court of the United States
for the Northern District of California

No. 28237 H-L

J. GORDON TURNBULL and SVERNDRUP
AND PARCEL, and UNITED STATES FI-
DELITY AND GUARANTY COMPANY,
Complainants,

vs.

ALBERT J. CYR, Deputy Commissioner for the
Thirteenth Compensation District of the Bureau
of Employees' Compensation, FEDERAL SE-
CURITY AGENCY, et al.,
Respondents.

CERTIFICATE OF CLERK TO
RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court
of the United States for the Northern District of
California, do hereby certify that the foregoing and
accompanying documents, listed below, are the orig-
inals filed in this Court, or a true and correct copy
of an order entered on the minutes of this Court,
in the above-entitled case, and that they constitute
the Record on Appeal herein, as designated by the
Appellants, to wit:

Complaint to Review Compensation Order and
for Injunction.

Motion of Respondent Albert J. Cyr, Deputy
Commissioner, to Dismiss Bill of Complaint.

[Endorsed]: No. 12493. United States Court of Appeals for the Ninth Circuit. J. Gordon Turnbull, Sverndrup and Parcel and United States Fidelity and Guaranty Company, Appellants, vs. Albert J. Cyr, Deputy Commissioner for the Thirteenth Compensation District of the Bureau of Employees' Compensation, Federal Security Agency and Lois G. M. Ross, alleged widow of Kenneth R. Ross, and John Cary Ross, a minor child, Appellees. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed March 8, 1950.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

In the United States Court of Appeals
for the Ninth Judicial Circuit

No. 12493

J. GORDON TURNBULL and SVERNDRUP
and PARCEL, and U. S. FIDELITY AND
GUARANTY COMPANY,

Appellants,

vs.

ALBERT J. CYR, Deputy Commissioner for the
Thirteenth Compensation District of the Bu-
reau of Employees' Compensation, Federal
Security Agency,

Appellees.

STATEMENT OF POINTS ON WHICH AP-
PELLANTS INTEND TO RELY ON AP-
PEAL AND DESIGNATION OF PARTS
OF RECORD NECESSARY FOR THE
CONSIDERATION THEREOF.

Appellants intend to rely on the following points
on appeal:

(1) That the District Court erred in granting
the motion to dismiss the complaint for an injunc-
tion against the enforcement of the Compensation
Order—Award of Death Benefit entered by the
appellee Cyr because said Compensation Order—

Award of Death Benefit was not in accordance with law in that there was no substantial evidence in the proceedings before appellee Cyr to support the finding that the claimant Lois G. M. Ross is the widow of the deceased employee by virtue of a common-law marriage contracted in the State of Colorado.

(2) That the District Court also erred in granting the motion to dismiss because said Compensation Order—Award of Death Benefit was not in accordance with law in that the claimant Lois G. M. Ross is not included in the class of persons entitled to payment of a death benefit under the Longshoremen's and Harbor Workers' Compensation Act (33 U. S. Code 901 et seq.) and the Defense Bases Act (42 U. S. Code 1651-1654).

(3) That the District Court also erred in granting the motion to dismiss because said Compensation Order—Award of Death Benefit was not in accordance with law in that the claimant John Gary Ross is not included in the class of persons entitled to payment of a death benefit under the Longshoremen's and Harbor Workers' Compensation Act (33 U. S. Code 901 et seq.) and the Defense Bases Act (42 U. S. Code 1651-1654).

Appellants request that the record as certified to the Clerk of the United States Court of Appeals

for the Ninth Judicial Circuit be printed in its entirety.

Dated: March 22, 1950.

LEONARD, HANNA &
BROPHY,

/s/ EDMUND D. LEONARD,

/s/ IVAN A. SCHWAB,

Attorneys for Appellants.

Affidavit of Service by Mail attached.

[Endorsed]: Filed March 23, 1950.

